

6681  
**DECISION**



*21 Bureau Civ. P.*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-191076

**DATE:** June 12, 1978

**MATTER OF:** Interstate Commerce Commission - Retroactive  
Substitution of Sick Leave for Annual Leave

**DIGEST:** Employee entitled to use sick leave specifically requested that such time be charged to annual leave. Family's timely request subsequent to employee's death that sick leave be substituted for annual leave may in agency's discretion, be allowed and be basis for agency to pay additional lump-sum leave payment to survivor.

The Chairman of the Interstate Commerce Commission has requested a decision as to whether an absence, which could have been charged to sick leave but was charged to annual leave at the employee's request, may after the employee's death be charged to sick leave with the recredited annual leave included in a lump-sum leave payment to the survivor of the deceased employee.

The Chairman states the circumstances as follows:

"An employee of this Commission requested annual leave, which was approved for the period, November 7-18. He signed the time and attendance cards before commencing the leave. He committed himself to a hospital on November 7, for psychiatric care and was discharged shortly before his death. He did not wish it to be known he was seeking professional care and did not inform anyone at the Commission that he was going to the hospital. His hospitalization was learned only after his death, when we were informed by a member of his family. The family then requested that his annual leave be recredited and his absence be charge to sick leave. This request initially was denied by the Commission as the employee had requested the annual leave purposely."

Further, it is administratively reported that the employee was on duty immediately prior to the period of leave in question, and that he returned to duty on November 21, 1977, was on sick leave on November 25 and returned to duty on November 28 until his death on November 29, 1977.

In 31 Comp. Gen. 524 (1952), it was recognized that absence due to illness may be charged to accrued annual leave if timely

B-191076

requested by the employee and approved by the administrative office concerned. The charge to annual leave in the present case is in accord with that decision.

The Chairman has cited two decisions of our Office, B-142571, April 20, 1960, and B-164346, June 10, 1968, which hold that sick leave may not be retroactively substituted for annual leave granted specifically at the employee's request for the purpose of a greater lump-sum payment to the survivor of a deceased employee. He states, however, that those rulings may not necessarily apply to the present situation.

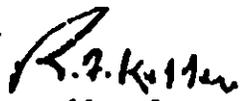
The Court of Claims recently decided Lindsey v. United States, No. 213-76 (Ct. Cl. July 8, 1977), an analogous case wherein an employee requested and was granted annual leave for a period of incapacity to prevent possible forfeiture. Later that calendar year the employee elected to retire and requested that sick leave be retroactively charged for the period in lieu of the annual leave previously requested and granted. His request was motivated by the fact that the annual leave could be included in his lump-sum payment, while the fractional month credit for sick leave gave him no benefit for retirement purposes. The court held that when an employee seeks leave substitution to be compensated for all his accumulated annual leave in the same year of his retirement, substitution of sick leave for annual leave is allowable. The court, although affirmatively limiting its holding to the specific facts of the case, made the following suggestion to our Office.

"It would not be inappropriate for the General Accounting Office to review de novo its over-all post hoc leave-substitution policy in the light, first, of the new 1969 and 1973 legislation, and, second, of the reality and measure of the burden on the employing agencies of permitting such retroactive adjustments. It may well be that leave changes should be allowed unless the agency itself feels that the administrative burden is too great, and accordingly adopts an internal regulation limiting or curtailing the privilege. It may even be that no rule applicable to the whole Government need be continued or promulgated, but that the matter should be left to each agency's own assessment of the needs of its employees balanced with the administrative ease or trouble in accommodating those needs."

B-191076

Without attempting to set forth a new general policy at this time, we now believe that, at least in those cases where the employee retires or dies during the same year in which the leave is taken, and a timely request is made, it is appropriate to permit agencies to allow retroactive leave substitution in their discretion depending upon the circumstances of each case. Our prior decisions to the extent of any inconsistency with this decision will no longer be followed.

In the present case, therefore, we have no objection to the retroactive recrediting of annual leave of the deceased employee and the charging his absence for the period of November 7-18, 1977, to sick leave if the Interstate Commerce Commission, in its discretion, determines that such action is appropriate.

  
Acting Comptroller General  
of the United States